# HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 20 OF 2001

L.S.

Donald TSANG
Acting Chief Executive
12 July 2001

An Ordinance to amend the Guardianship of Minors Ordinance, the Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance.

[ ]

Enacted by the Legislative Council.

## PART I

### PRELIMINARY

**1. Short title and commencement**

(1) This Ordinance may be cited as the Attachment of Income Orders (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

## PART II

### GUARDIANSHIP OF MINORS ORDINANCE

**2. Attachment of income to satisfy order**

Section 20 of the Guardianship of Minors Ordinance (Cap. 13) is amended—

(*a*) by repealing subsections (1) and (2) and substituting—

"(1AA) In this section—

"attachment order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made—

(*a*) under section 10(2)(*b*), 11(1)(*b*)(ii), 12(*b*)(ii) or 13(2)(*b*), (3)(*a*) or (4) for periodical payments; or

(*b*) under section 10(2)(*c*), 11(1)(*b*)(iii) or 12(*b*)(iii) for secured periodical payments; or

(*c*) under section 10(2)(*a*), 11(1)(*b*)(i), 12(*b*)(i) or 13(2)(*a*) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and—

(*a*) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or

(ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or

(iii) the payer and designated payee agree to the making of an order under this section; and

(*b*) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made under subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(*a*)(ii), in deciding whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to)—

(*a*) the payer's past record and conduct in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;

(*b*) the payer's past record and conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an undertaking in any proceedings; and

(*c*) the risk of the payer dissipating his property.";

(*b*) by adding—

"(2A) The court may, at any time after a maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

(*c*) in subsection (3)—

(i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";

(ii) by repealing "designated" and substituting "specified";

(*d*) in subsection (6)(*d*) and (*e*), by adding "費" after "養";

(*e*) by adding—

"(6A) Rules made under subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.".

# PART III

## SEPARATION AND MAINTENANCE ORDERS ORDINANCE

### 3. Attachment of income to satisfy order

Section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16) is amended—

(*a*) by repealing subsections (1) and (2) and substituting—

"(1AA) In this section—

"attachment order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made—

(*a*) under section 5(1)(*c*) or (*d*) or 9(1) for periodical payments; or

(*b*) under section 5(1)(*c*) or (*d*) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and—

(*a*) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or

(ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or

(iii) the payer and designated payee agree to the making of an order under this section; and

(*b*) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made under subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(*a*)(ii), in deciding whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to)—

(*a*) the payer's past record and conduct in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;

(*b*) the payer's past record and conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an undertaking in any proceedings; and

(*c*) the risk of the payer dissipating his property.";

(*b*) by adding—

"(2A) The court may, at any time after a maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

(*c*) in subsection (3)—

(i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";

(ii) by repealing "designated" and substituting "specified";

(*d*) in subsection (6)(*d*) and (*e*), by adding "費" after "養";

(*e*) by adding—

"(6A) Rules made under subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.".

# PART IV

## MATRIMONIAL PROCEEDINGS AND PROPERTY ORDINANCE

### 4. Attachment of income to satisfy order

Section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) is amended—

(*a*) by repealing subsections (1) and (2) and substituting—

"(1AA) In this section—

"attachment order" (扣押令) means an order made under subsection (1);

"designated payee" (指定受款人) means, in relation to a maintenance order, the person named in that order as the person to whom the maintenance payments are to be made;

"maintenance order" (贍養令) means an order made—

(*a*) under section 4(1)(*a*), 5(2)(*a*), 8(5) or (6)(*a*) or (*d*) or 15(4) or (5) for periodical payments; or

(*b*) under section 4(1)(*b*), 5(2)(*b*), 8(6)(*b*) or (*e*) or 15(4) or (5) for secured periodical payments; or

(*c*) under section 4(1)(*c*), 5(2)(*c*) or 8(6)(*c*) or (*f*) for payment of a lump sum by instalments;

"maintenance payer" (贍養費支付人) means, in relation to a maintenance order, the person against whom that order is made;

"specified payee" (指明受款人) means, in relation to an attachment order, the person named in that order as the person to whom an amount attached by that order is to be paid.

(1) Where a maintenance order has been made against a maintenance payer and—

(*a*) (i) a court is satisfied that the payer has without reasonable excuse failed to make any payment which he is required to make by the maintenance order; or

(ii) a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order; or

(iii) the payer and designated payee agree to the making of an order under this section; and

(*b*) there is any income capable of being attached payable to the payer,

the court may, in accordance with rules made for the purpose of subsection (6), order the income to be attached as to the whole or part of the amount payable under the maintenance order and the amount attached to be paid to the specified payee.

(1A) For the purpose of subsection (1)(*a*)(ii), in deciding whether there are reasonable grounds to believe that the maintenance payer will not make full and punctual payment in compliance with the maintenance order, the court shall take into account all the circumstances of the case, including (but not limited to)—

(*a*) the payer's past record and conduct in discharging his reasonable financial obligation towards the designated payee before any maintenance order is made;

(*b*) the payer's past record and conduct in connection with the making of maintenance payments to the payee pursuant to the maintenance order or an undertaking in any proceedings; and

(*c*) the risk of the payer dissipating his property.";

(*b*) by adding—

"(2A) The court may, at any time after a maintenance order has been made, including in the same hearing in which the maintenance order is made or varied, make an attachment order.

(2B) An attachment order may be made by the court on its own motion or on the application by the maintenance payer or the designated payee or both.";

(*c*) in subsection (3)—

(i) by repealing "order made under this section (an "attachment order")" and substituting "attachment order";

(ii) by repealing "designated" and substituting "specified";

(*d*) in subsection (6)(*d*) and (*e*), by adding "費" after "養";

(*e*) by adding—

"(6A) Rules made for the purpose of subsection (6) may empower the court to dispense with or relax any procedure or abridge any time limit specified in the rules if the court is satisfied that it is fair and reasonable to do so in the circumstances of the case.".

## PART V

## CONSEQUENTIAL AMENDMENT

### Attachment of Income Order Rules

### 5. Interpretation

Rule 2 of the Attachment of Income Order Rules (Cap. 13 sub. leg.) is amended, in the definition of "related maintenance order"—

(*a*) by repealing "order specified" and substituting "maintenance order defined";

(*b*) by repealing "(2)" wherever it appears and substituting "(1AA)".